

Message Text

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PAGE 01 STATE 030644
ORIGIN EB-08

INFO OCT-01 EUR-12 ISO-00 L-03 JUSE-00 PM-04 FTC-01 H-02
CAB-05 CIAE-00 COME-00 DODE-00 DOTE-00 INR-07 NSAE-00
CIEP-02 FAA-00 SP-02 USIA-15 AID-05 NSC-05 TRSE-00
SS-15 STR-04 OMB-01 CEA-01 /093 R

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APPROVED BY EB/IFD/BP:HJWINTER
L/EB:PTRIMBLE
L/EB:PMICKEY
EUR/CE:RCASAGRANDE
JUSTICE:DROSENTHAL

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R 102037Z FEB 77
FM SECSTATE WASHDC
TO AMEMBASSY BONN
INFO USMISSION USBERLIN
AMCONSUL FRANKFURT
USMISSION OECD PARIS

UNCLAS STATE 030644

E.O. 11652: N/A

TAGS: ETRD, EAIR, GW, US

SUBJECT: ANTITRUST - LUFTHANSA INDICTMENT

REF: BONN 1669

1. EMBASSY MAY WISH TO DRAW ON FOLLOWING POINTS IN DISCUSSIONS WITH FRG CONCERNING LUFTHANSA, PANAM, TWA INDICTMENT ON PRICE COLLUSION AND THE APPLICABILITY OF THE 1976 U.S.-FRG ANTITRUST COOPERATION AGREEMENT.

2. FRG WAS NOTIFIED IN JANUARY, 1975 DURING THE VERY EARLY UNCLASSIFIED

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STAGES OF DEPARTMENT OF JUSTICE (DOJ) INVESTIGATION OF POSSIBLE PRICE FIXING VIOLATIONS BY LUFTHANSA AND OTHERS. AT THAT TIME FRG WAS ASKED TO COOPERATE IN THE INVESTIGATION. IN REPLY SEVERAL WEEKS LATER DR. TIETMEYER FURNISHED DOJ WITH SOME OF THE REQUESTED INFORMATION BUT CONCLUDED THAT QUOTE BASED ON THE EXCEPTION FROM CARTEL LAWS FOR AIRLINES' AGREEMENTS ABOUT TRANSPORTATION RATES AND

TERMS, THERE EXISTS IN THIS CASE, ACCORDING TO GERMAN LAW, NO POSSIBILITY OF REQUIRING LUFTHANSA TO GIVE INFORMATION TO THE GERMAN AND AMERICAN ANTITRUST AUTHORITIES. UNQUOTE (TEXT BEING POUCHED).

3. UNDER U.S. LAW ACTIVITIES OF A GRAND JURY ARE HIGHLY RESTRICTED. WHILE IT MIGHT HAVE BEEN POSSIBLE TO EXCHANGE

INFORMATION RELATIVELY FREELY AT THE PRELIMINARY STAGES OF THE INVESTIGATION, ONCE THE INVESTIGATION REACHES THE GRAND JURY STAGE SECRECY RESTRICTIONS MUST BE APPLIED UNDER U.S. LAW. A GRAND JURY MAY ALSO TAKE SEVERAL SHIFTS WITH RESPECT TO THE NATURE OR DIRECTION OF THE INVESTIGATION DEPENDING ON AVAILABLE INFORMATION BUT IT IS INAPPROPRIATE TO INFORM INVOLVED PARTIES OF THIS TRANSITION.

4. THE ACTIONS TAKEN BY DOJ TO INFORM THE FRG OF THIS INVESTIGATION AND REQUEST ITS ASSISTANCE AND THE FRG REASONS FOR NOT BEING ABLE TO FULLY COMPLY SEEM TO BE CONSISTENT WITH BOTH THE LETTER AND SPIRIT OF ARTICLES 2 THROUGH 4 AND 6 OF THE BILATERAL AGREEMENT.

5. UNDER THE TERMS OF THE 1967 OECD RECOMMENDATION QUOTE GOVERNMENTS OF MEMBER COUNTRIES THAT IN SO FAR AS THEIR LAWS PERMIT, WHEN MEMBER COUNTRIES UNDERTAKE UNDER THEIR RESTRICTIVE BUSINESS PRACTICES LAWS AN INVESTIGATION OR A PROCEEDING INVOLVING IMPORTANT INTERESTS OF ANOTHER MEMBER COUNTRY, THEY SHOULD NOTIFY SUCH MEMBER COUNTRY IN UNCLASSIFIED

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A MANNER AND AT A TIME DEEMED APPROPRIATE. NOTIFICATION SHOULD, WHERE APPROPRIATE, TAKE PLACE IN ADVANCE IN ORDER TO ENABLE THE PROCEEDING MEMBER COUNTRY, WHILE RETAINING FULL FREEDOM OF ULTIMATE DECISION, TO TAKE ACCOUNT OF SUCH VIEWS AS THE OTHER MEMBER COUNTRY MAY WISH TO EXPRESS AND OF SUCH REMEDIAL ACTION AS THE OTHER MEMBER COUNTRY MAY FIND IT FEASIBLE TO TAKE UNDER ITS OWN LAWS TO DEAL WITH THE RESTRICTIVE BUSINESS PRACTICE. UNQUOTE. U.S. AGENCIES INVOLVED IN ENFORCEMENT OF ANTITRUST LAWS HAVE GENERALLY UNDERSTOOD THIS PROVISION TO CALL FOR TEN DAY'S ADVANCE NOTIFICATION. U.S. ANTITRUST NOTIFICATION WAS GIVEN IN THIS TIME PERIOD AND AN OPPORTUNITY FOR CONSULTATION WAS AFFORDED. AS A MATTER OF FACT, A MEETING WITH THE FRG EMBASSY AND JUSTICE WAS ARRANGED FOR JANUARY 26 AND A FURTHER MEETING BETWEEN MR. HOLSTEIN OF LUFTHANSA AND JUSTICE WAS ARRANGED FOR FEBRUARY 1.

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Message Attributes

Automatic Decaptioning: X
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Sent Date: 10-Feb-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01-Jan-1960 12:00:00 am
Disposition Event:
Disposition History: n/a
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TAGS: ETRD, EAIR, GE, US, LUFTHANSA, TWA, PANAM
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